

Ordinance No. 17901-12-2007

AN ORDINANCE AMENDING CHAPTER 35, "WATER AND SEWERS", ARTICLE VI, "LAWN AND LANDSCAPE IRRIGATION CONSERVATION" OF THE CODE OF THE CITY OF FORT WORTH (1986), AS AMENDED, BY AMENDING SECTION 35-151 "LAWN AND LANDSCAPE IRRIGATION RESTRICTIONS" TO MANDATE YEAR ROUND WATERING AND IRRIGATION RESTRICTIONS AND TO PROVIDE FOR AFFIRMATIVE DEFENSES AND EXCEPTIONS TO PROSECUTION OF AN OFFENSE UNDER THIS ARTICLE; AMENDING SECTION 35-152 "RAIN SENSING DEVICES AND FREEZE GAUGES" TO REQUIRE PROPERLY WORKING RAIN AND FREEZE SENSORS; ADDING SECTIONS 35-154 TO 35-157 TO ALLOW FOR ADMINISTRATIVE REMEDIES FOR CERTAIN VIOLATIONS UNDER THIS ARTICLE AND TO PROVIDE PROCEDURES FOR AN APPEAL AND HEARING; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council finds that conservation of water and protection of water supplies are in the best interest of its citizens; and

WHEREAS, on April 19, 2005, the City Council adopted a water conservation plan through the adoption of Resolution No. 3190-04-2005; and

WHEREAS, on May 9, 2006, the City Council adopted an ordinance to institute time of day watering restrictions for the months of June through September and to require rain and freeze sensors on certain new and existing irrigation systems (M&C G-15197); and

WHEREAS, the Water Conservation Plan proposes a goal of reducing water consumption to a level of 190 gallons per capita per day by 2010 and 180 gallons per capita per day by 2015; and

WHEREAS, securing future water supplies will require proving to state permitting agencies that existing water supplies are being used efficiently.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS:

SECTION 1.

Part II of the Code of the City of Fort Worth, Texas (1986), as amended, Chapter 35, "Water and Sewers", Article VI, "Lawn And Landscape Irrigation Conservation" is hereby further amended to read and be as follows:

ARTICLE VI. LAWN AND LANDSCAPE IRRIGATION CONSERVATION

SECTION 35-151. Lawn and Landscape Irrigation Restrictions.

- (a) Except for hand watering and the use of soaker hoses, a person commits an offense if that person irrigates, waters, or causes or permits the irrigation or watering of any lawn or landscape located on premises owned, leased, or managed by that person between the hours of 10:00 a.m. and 6:00 p.m.
- (b) A person commits an offense if he knowingly or recklessly irrigates, waters, or causes or permits the irrigation or watering of a lawn or landscape located on premises owned, leased or managed by the person in a manner that causes:
 - (1) a substantial amount of water to fall upon impervious areas instead of a lawn or landscape, such that a constant stream of water overflows from the lawn or landscape onto a street or other drainage area; or
 - (2) an irrigation system or other lawn or landscape watering device to operate during any form of precipitation.
- (c) A person commits an offense if, on premises owned, leased, or managed by that person, a person operates a lawn or landscape irrigation system or device that:
 - (1) has any broken or missing sprinkler head; or
 - (2) has not been properly maintained in a manner that prevents the waste of water.
- (d) Affirmative Defenses
 - (1) It shall be an affirmative defense to prosecution of an offense in section 35-151 (a) that at the time such person irrigates, waters, or causes or permits the irrigation or watering of any lawn or landscape, such activity was for the purpose of:
 - (A) establishing hydromulch, grass sod, or grass seed;
 - (B) dust control of a sports field; or

- (C) for the maintenance, repair, or testing of an irrigation system.
- (2) Such activity described in Subsection (d)(1) may be an affirmative defense to prosecution only if the activity occurred for a period of thirty consecutive days or less. After the thirtieth consecutive day of such activity, a person who irrigates, waters, or causes or permits the irrigation or watering of any lawn or landscape in violation of this section shall be subject to administrative fees and criminal penalties.
- (e) It shall be an exception to prosecution of an offense in this section, if a person who irrigates, waters, or causes or permits the irrigation or watering does so by use of an alternative water source such as a well, reclaimed or reused water, or water from the Trinity River if that person has:
 - (1) Registered such alternative water source with the City;
 - (2) Provided sufficient proof to the director that the alternative water source is from a well, reclaimed or reused water or from the Trinity River and has allowed inspection by the director if deemed necessary; and
 - (3) Complied with the City's Backflow and Cross-connection Control Program and City Code Sections 12.5-525 through 12.5-599.

SECTION 35-152. Rain Sensing Devices and Freeze Gauges.

- (a) Any commercial or industrial customer class irrigation system installed within the City on or after June 1, 2006 must be equipped with properly working rain and freeze sensors.
- (b) Any commercial or industrial customer class irrigation system installed before June 1, 2006 may not be operated after June 1, 2007 without being equipped with properly working rain and freeze sensors.
- (c) The potable water supply to lawn irrigation system shall be protected against backflow in accordance with the City's Backflow and Cross-connection Control Program, City Code Sections 12.5-525 through 12.5-599. All rain and freeze sensors for commercial customer class lawn irrigation systems shall under go annual inspection and testing concurrent with schedules associated with the requirements of Section 12.5-532.
- (d) Any residential customer class irrigation system installed within the City on or after June 1, 2007 must be equipped with properly working rain and freeze sensors.
- (e) It shall be unlawful for any person to knowingly or recklessly install, operate, or cause or permit the installation of or the operation of, an irrigation system in violation of subsections 35-152(a) through (d) on premises owned, leased, or managed by that person.

SECTION 35-154. Essential Services.

The governmental use of water for essential services such as police, fire and emergency services which are necessary to preserve or protect the health, safety and welfare of the citizens of Fort Worth are exempt from any and all restrictions or mandates set forth in this Article.

SECTION 35-155. Administrative Fee.

The director or the director's designee may assess an administrative fee, in addition to any criminal penalty assessed for a violation of this Article as described below. Each day that a violation occurs shall constitute a separate violation.

(a) In-ground irrigation systems violations.

- (1) The director may install a locking device on a double check valve to the irrigation system found to be operating in violation of this Article and shall assess an administrative fee as approved by City Council.
- (2) Notice shall be left on the premise to advise the owner/operator that the double check valve to the irrigation system has been turned off; and
- (3) Notice shall also be sent by United States Postal Service to the person recorded as the city's water customer notifying that person that the irrigation system has been turned off and locked. The notice shall also state the amount of the assessed administrative fee and shall advise the person of the procedures for payment of the fees and the procedure to request a hearing to contest the assessment of the administrative remedy.

(b) Violations for systems without double-check valves or in-ground irrigations systems.

- (1) The director shall leave notice on the premise to advise the owner/operator that the person was in violation of watering restrictions and may assess an administrative fee as approved by City Council.
- (2) Notice shall also be sent by United States Postal Service to the person recorded as the city's water customer notifying that person of the assessment of administrative fees and advising the person of the procedures for payment of the fees and the procedure to request a hearing to contest the assessment of the administrative remedy.

(c) It shall be unlawful for any person to tamper with, cause damage to or remove a locking device placed on a check value by the director or the director's representative.

SECTION 35-156. Procedures for paying administrative fees or Requesting a Hearing on the Fees.

- (a) A person assessed an administrative fee who wishes to re-establish service to the irrigation system is required to make payment of the assessed fee.
- (b) A person may request a hearing to protest the assessment of an administrative fee. To request a hearing, the water customer must make the request in person to the Water Department within fifteen (15) business days from the date on the written notice of violation. If a locking device was installed it shall remain in place until the conclusion of the hearing and payment of any required fee.
- (c) The director or his designee shall act as the hearing officer. The director shall evaluate all information offered by the petitioner at the hearing. The petitioner making the request for a hearing shall bear the burden of proof to show by a preponderance of the evidence, why the administrative fee should not be assessed. The hearing officer will provide a decision at the time of the hearing or within three (3) business days following the conclusion of the hearing.
- (d) Payment of any fees assessed at the hearing must be made within seven (7) business days of the decision from the hearing. Any fees not paid within this time limit shall be added to the customer's next water bill.
- (e) A person may elect to pay the administrative fee without requesting a hearing. Any fees not paid within fifteen (15) business days from the date of the written notice shall be added to the person's next water bill.

SECTION 35-157. Re-establishment of Service to Double Check Valves that have been Locked Off.

The locking device will be removed by the Director or his designee within three (3) working days after payment is received from customer.

**SECTION 2.
CUMULATIVE PROVISIONS**

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Fort Worth, Texas (1986), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 3.
SEVERABILITY CLAUSE

It is hereby declared to be the intention of the City Council that the phrase, clause, sentence, paragraph or section of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 4.
PENALTY CLAUSE

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than two thousand dollars (\$2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 5.
RIGHTS AND REMEDIES

All rights and remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the provisions of the ordinances amended herein, which have accrued at the time of the effective date of this ordinance and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

**SECTION 6.
PUBLICATION**

The City Secretary of the City of Fort Worth, Texas, is hereby directed to publish the caption of this ordinance and the penalty clause for two (2) days in the official newspaper of the City of Fort Worth, Texas, as authorized by Section 2, Chapter XXV of the Charter of the City of Fort Worth, Texas and by Section 52.013, Texas Local Government Code.

**SECTION 7.
EFFECTIVE DATE**

This Ordinance shall take effect upon adoption as required by law.

APPROVED AS TO FORM AND LEGALITY:

By: Christo R. Rye
Assistant City Attorney

ADOPTED: December 4, 2007

EFFECTIVE: December 18, 2007